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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re KAYLA V., a Person Coming Under the  
Juvenile Court Law.

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LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

OMAR V.,

Appellant and Defendant.

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B208595

(Los Angeles County  
Super. Ct. No. CK69640)

APPEAL from an order of the Superior Court of Los Angeles County,  
Valerie Skeba, Referee. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County  
Counsel and O. Raquel Ramirez, Deputy County Counsel for Plaintiff and Respondent.

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## INTRODUCTION

This is a juvenile dependency case. The juvenile court exercised jurisdiction over an infant girl after finding that she was a person within the meaning of Welfare and Institutions Code section 300, subdivision (e)<sup>1</sup>, which provides the court with jurisdiction over children who suffer “severe physical abuse.” Father appeals from the court’s jurisdictional order. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

Appellant Omar V. (father) is the presumed father of Kayla V. Father, Kayla, and Kayla’s mother, Rosario A. (mother), lived with each other and mother’s relatives for about a year prior to the incident which gave rise to this action.

### 1. *Kayla’s Injuries*

On August 19, 2007, at approximately 9:00 p.m., mother left Kayla home alone with father. Kayla was less than two months old at the time. At about 9:45 p.m., mother received a call from father. Father told mother that Kayla almost fell to the ground but he caught her. Mother could hear the baby crying over the telephone. Mother rushed home and found that Kayla’s face was bruised and swollen.

At about 12:05 a.m., on August 20, 2007, Kayla and her parents arrived at the emergency room at a nearby hospital. Kayla’s “entire face” was “black and blue.” She had bruises on her forehead, both eye lids, and cheeks, as well as facial swelling, especially on her lips. Kayla also had two linear streaks on her forehead, two linear streaks on each of her cheeks, and a contusion on her nose.

Douglas R. Willard, M.D., examined Kayla at the emergency room and diagnosed her with “blunt head and facial trauma; multiple contusions, no bleeding.” Dr. Susanne Sager, who examined Kayla two days later, concluded in a report to the Los Angeles

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<sup>1</sup> All subsequent section references are to the Welfare and Institutions Code.

<sup>2</sup> We summarize the facts in the record by presenting them in a light most favorable to the juvenile court’s jurisdictional order. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.)

County Sheriff's Department that "Kayla's injury was the result of significant force to her face." Dr. Sager added that "based on the amount of force used, which caused the facial bruising on such a young infant, Kayla could have sustained a cervical spine injury, but did not." Kayla's physicians also determined that it did not appear that Kayla suffered any internal injuries, including injuries to her skull, brain and eyes.

2. *Father's Physical Abuse of Kayla and False Statements Regarding Kayla's Injuries*

Kayla's injuries were caused by father's physical abuse. Father, however, repeatedly lied to mother, medical personnel, social workers from the Los Angeles Department of Children and Family Services (Department), and law enforcement officers regarding the cause of Kayla's injuries. Father falsely claimed that Kayla injured her face when he caught her falling from his arms while he was feeding her. On November 16, 2007, while undergoing a polygraph examination, father confessed to the police that he slapped Kayla twice because he was frustrated that she would not stop crying.<sup>3</sup>

3. *Procedural History of this Action*

This action commenced in August 2007 when the Department filed a juvenile dependency petition. The Department alleged that the juvenile court had jurisdiction over Kayla under section 300, subdivisions (a), (b) and (e). In January 2008, the juvenile court sustained the allegations in the petition, as modified by the court, with respect to the section 300, subdivisions (a) and (e)<sup>4</sup>, but dismissed the section 300, subdivision (b) allegations.

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<sup>3</sup> Mother, too, initially told medical personnel an untrue story about Kayla's injuries. She claimed that Kayla was accidentally injured while she was bathing her. Later, mother admitted that her story was false. After learning that father confessed to intentionally slapping Kayla, mother ended her relationship with father.

<sup>4</sup> The section 300, subdivision (e) allegation stated: "On or about 08-19-07, the child Kayla V[...] was hospitalized and found to be suffering a detrimental condition including severe bruising and swelling to the one-month old [sic] child's eyes, face, forehead, cheeks and lips caused by the father hitting the minor 2 times in the face."

In May 2008, the juvenile court found by clear and convincing evidence that substantial danger existed to Kayla's physical and emotional health and safety, and that there was no reasonable means to protect the child without removing her from the custody of father. The court thus placed Kayla in the care, custody and control of the Department. Over the Department's objections, however, the court granted father reunification services.<sup>5</sup> This appeal followed.

## CONTENTIONS

Father does not dispute that the juvenile court had jurisdiction over Kayla under section 300, subdivision (a). He contends, however, that there was not substantial evidence to support the juvenile court's jurisdictional findings under section 300, subdivision (e).<sup>6</sup>

## DISCUSSION

### 1. *Standard of Review*

In evaluating whether Kayla "came under section 300, subdivision (e), we use the substantial evidence standard of review, where we determine whether evidence that is of reasonable, credible and solid value supports the dependency court's findings. We do not reweigh the evidence, nor do we consider matters of credibility." (*In re E. H.* (2003) 108 Cal.App.4th 659, 669.)

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<sup>5</sup> Father had attended parenting and anger management courses, as well as Alcoholics Anonymous. At the May 22, 2008 hearing, the court stated: "... I think it's pretty clear that the father has done everything that he would have been expected to do. In fact, he did more."

<sup>6</sup> An appellate court can affirm a juvenile court's finding of jurisdiction if the evidence supports the finding on any one of the enumerated statutory bases which, if supported by the evidence, can suffice to establish jurisdiction. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) Accordingly, we would affirm the juvenile court's jurisdiction over Kayla even if we found that the juvenile court did not have jurisdiction pursuant to section 300, subdivision (e). We nevertheless address the merits of father's appeal because the juvenile court's findings with respect to section 300, subdivision (e), could affect future proceedings.

We do not consider whether there is a substantial conflict of the evidence. Rather, we must consider whether there is substantial evidence *in favor of the respondent*. (*In re Stephen W.* (1990) 221 Cal.App.3 629, 644, fn. 12.) If this substantial evidence is present, “ ‘no matter how slight it may appear in comparison with the contradictory evidence,’ ” the judgment must be affirmed. (*Ibid.*) Under this standard, the judgment here must clearly be affirmed.

## 2. *Elements of Section 300, Subdivision (e) Jurisdiction*

Section 300, subdivision (e) provides: “Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

“[¶] . . . [¶]

“(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child.”

The Department “must establish the following elements in order to justify a subdivision (e) jurisdictional finding:

“(1) there is a minor under the age of five;

“(2) who has suffered severe physical abuse as defined in section 300, subdivision (e);

“(3) by a parent or any person known to the parent if the parent knew or reasonably should have known that the person was physically abusing the minor.”

(*In re Joshua H.* (1993) 13 Cal.App.4th 1718, 1727.) Father does not dispute that elements (1) and (3) were satisfied, but disputes that element (2) was satisfied.

Section 300, subdivision (e) defines “severe physical abuse” as meaning any of the following: “[1] any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; [2] any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or [3] more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external

or internal swelling, bone fracture, or unconsciousness; or [4] the willful, prolonged failure to provide adequate food.” We find that there was substantial evidence to support a finding that father’s conduct fell within the third prong of the statutory definition of severe physical abuse.<sup>7</sup>

3. *Substantial Evidence Supports the Juvenile Court’s Section 300, Subdivision (e) Jurisdictional Findings*

A. *There Was More Than One Act of Physical Abuse*

It is undisputed that father slapped Kayla in the face two times. Each slap constituted an “act” of severe physical abuse within the meaning of section 300, subdivision (e). In this context, the word “act” means “a deed.” (See Webster’s 9th New Collegiate Dict. (1983) p. 53; Black’s Law Dict. (6th ed. 1990) p. 25, col. 2.) One slap of the face of a two-month-old infant is by itself a deed. A fortiori, two slaps constitute two such deeds, or acts.

Father argues that more than one “act” of physical abuse did not occur here. He contends that “the physical abuse occurred on one occasion, but consisted of two slaps.” The statute, however, does not use the word “occasion.” The word “occasion,” moreover, is not synonymous with the word “act.” An “occasion” is “a time at which something happens.” (Webster’s 9th New Collegiate Dict. (1983) p. 816.) More than one act can occur during the time period encompassed by an occasion.

Father’s reliance on *In re Joshua H.* is misplaced. There, the court described several “occasion[s]” in which physical abuse occurred, one of which consisted of the appellant slapping a child nine or ten times. (*In re Joshua H.*, *supra*, 13 Cal.App.4th at pp. 1728-1729.) The court did not, however, address the issue of whether each slap or

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<sup>7</sup> The Department contends, and father disputes, that father’s conduct fell within the first prong of the statutory definition of severe physical abuse. Because we find substantial evidence supports a finding that the third prong was satisfied, we do not reach that issue.

other deed by the appellant consisted of a separate “act” within the meaning of section 300, subdivision (e). *In re Joshua H.* thus lends no support to father’s argument.

B. *There Was Substantial Evidence That Each Act Caused Kayla Deep Bruising and Significant External Swelling*

There was substantial evidence for the juvenile court to make a reasonable inference that each slap caused Kayla “deep bruising” and “significant external . . . swelling” within the meaning of section 300, subdivision (e). This evidence consisted of medical reports, Department reports, including a diagram of Kayla’s injuries, reports by the Los Angeles County Sheriff’s Department Special Victims Bureau, mother’s testimony, and at least two photographs of Kayla. For example, mother testified that on the night of August 19, 2007, Kayla’s face was “so swollen” that she “couldn’t even touch her.” In fact, Kayla’s injuries were sufficiently severe that her parents took her to an emergency room, where medical professionals documented the swelling and bruising of Kayla’s face. A Department social worker who personally observed Kayla’s injuries on August 20, 2007, reported that “[t]he injuries to Kayla’s face look as if her face was pushed into an object, or that she was slammed really hard with an object, possibly a hand.”

Father argues that Kayla’s injuries were not sufficiently severe to come within the parameters of section 300, subdivision (e). He relies on a police report dated August 20, 2007, which described Kayla’s injuries as consisting of “superficial bruising.” He also cites mother’s statement that Kayla was anemic, and that a doctor told mother that Kayla’s skin was more sensitive to bruising as a result of that condition.

As we have explained, however, we cannot reweigh the evidence. We thus cannot consider father’s evidence because it is contradicted by other evidence submitted by the Department. The juvenile court, moreover, had reasonable grounds to discount the evidence relied upon by father. The police officers who wrote the August 20, 2007, report believed father’s false account of the cause of Kayla’s injuries despite being informed of emphatic statements by physicians that the injuries were not consistent with father’s story. Likewise, a reasonable inference could be made that mother’s statements

regarding anemia were contradicted by Dr. Sager's statement that Kayla's "low blood count" may have been "*the result* of her [internal] facial bleeding and her being of light weight." (Emphasis added.) The credibility of the police officers and mother was an issue for the juvenile court to determine, not a matter which we can consider on appeal.

### **DISPOSITION**

The juvenile court's order sustaining the Department's allegation that Kayla was a person described by section 300, subdivision (e), is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.